

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 23, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

Nos. 97-1576 & 97-2049

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

No. 97-1576

**IN RE THE TERMINATION OF PARENTAL RIGHTS OF
LYNDA D.H. AND KESHAUN G.H.,
PERSONS UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

LINDA J.,

RESPONDENT-APPELLANT.

No. 97-2049

**IN RE THE TERMINATION OF PARENTAL RIGHTS OF
LYNDA D.H. AND KESHAUN G.H.,
PERSONS UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

LORENZO H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
THOMAS P. DONEGAN, Judge. *Affirmed.*

WEDEMEYER, P.J.¹ Linda J. and Lorenzo H. appeal from an order terminating their parental rights to their daughters, Lynda D.H. and Keshawn G.H. Linda J. claims that the trial court erroneously exercised its discretion in terminating her parental rights because it failed to consider all of the factors enumerated in § 48.426(3), STATS. Lorenzo H. claims that the trial court erroneously exercised its discretion in terminating his parental rights because it failed to find that: (1) Lorenzo and other family members had significant relationships with the children, and (2) termination was essential to the children's safety or welfare. Because the trial court did not erroneously exercise its discretion when it terminated Linda and Lorenzo's parental rights, this court affirms.

I. BACKGROUND

In February 1995, the State filed a petition to terminate the parental rights of Linda and Lorenzo. The children, Lynda D.H. and Keshawn G.H., had been placed outside the parental home since September 1987. The petition alleged that Linda had abandoned her children, as defined by § 48.415(1)(a)2, STATS.,²

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

² Section 48.415(1)(a)2, STATS., provides in pertinent part:

(continued)

because she had not seen them since the fall of 1993. The petition also alleged that Lorenzo had failed to assume parental responsibility for the children as defined by § 48.415(6), STATS.³

On December 16, 1996, this case was tried to a jury, which found that Linda had abandoned her children and that Lorenzo had failed to assume parental responsibility for the children. Based on these findings, the trial court concluded that both parents were unfit and a dispositional hearing was held in

Grounds for termination of parental rights shall be one of the following:

(1) ABANDONMENT. (a) Abandonment, which, subject to par. (c), shall be established by proving that:

....

2. The child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

³ Section 48.415(6), STATS., provides in pertinent part:

(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY.

(a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has ever expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

January 1997. Following the hearing, the trial court terminated both Linda and Lorenzo's parental rights. Linda and Lorenzo now appeal.⁴

II. DISCUSSION

After a finding that grounds exist for terminating parental rights, the trial court's decision to actually terminate parental rights involves the exercise of discretion. *K.D.J. v. Polk County*, 163 Wis.2d 90, 103-04, 470 N.W.2d 914, 920 (1991). This court reviews such determinations under the erroneous exercise of discretion standard. Accordingly, the trial court's decision in this case will not be overturned if the record demonstrates that the trial court examined the pertinent facts, applied the proper legal principles, and reached a reasonable conclusion. *See B.W.S. v. W.G.N.*, 131 Wis.2d 301, 315, 388 N.W.2d 615, 622 (1986).

Both Linda and Lorenzo argue that the trial court erroneously exercised its discretion in terminating their parental rights. After reviewing the record, this court concludes that the trial court properly exercised its discretion in terminating both parents' legal rights.

A. Linda.

Linda's only argument is that the trial court failed to consider two factors which it is statutorily required under § 48.426(3), STATS., to consider in reaching its determination.⁵ Linda argues that the trial court failed to consider

⁴ Although both Linda and Lorenzo's cases were tried together, each filed a separate notice of appeal and the appeals were never formally consolidated. Upon this court's own motion, the two cases are ordered consolidated for the purposes of disposing of this appeal.

⁵ Section 48.426(3), STATS., provides:

(continued)

subsection (b) at all and subsection (f) in part. In reviewing the record, this court rejects Linda's contentions.

At the dispositional hearing, the trial court clearly considered both subsections. With respect to (b), the trial court stated:

I look at the age and health of each of the children, both now, and at the time the child was removed from the home, and I think the most significant factor on that standard in this case is that the children are in appropriate schooling, are having, from all of the evidence, their basic needs met, and as they have aged, they have aged in that home in that permanent placement since 1990.

Further, the order terminating the parental rights indicates: "There is nothing about the ages or health which presents a barrier to future planning."

With respect to (f), the trial court commented: "a more stable and permanent family relationship clearly, that's what they are in now, and to break it would add instability, confusion, and I think would do harm to it."

(3) FACTORS. In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(a) The likelihood of the child's adoption after termination.

(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

(c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.

(d) The wishes of the child.

(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

Because the record clearly shows that the trial court considered the appropriate factors, applied the correct law and reached a reasonable decision, this court cannot conclude that the trial court erroneously exercised its discretion in terminating Linda's parental rights.⁶

B. Lorenzo.

Lorenzo also claims the trial court erroneously exercised its discretion in terminating his parental rights. He alleges that the trial court failed to find that: (1) Lorenzo and other family members had a significant relationship with the children and it would be harmful to sever these relationships, and (2) termination was essential to the children's safety or welfare. The record demonstrates that the trial court did not erroneously exercise its discretion.

With respect to "significant relationships with the children," the trial court determined:

Whether either child has a substantial relationships [sic] with either of you or either of your family members, and whether it would be harmful to either of these children to sever[] those relationships. There has been alot [sic] of testimony about that, and I have been asked to read that testimony different ways; depending on who is making the arguments, and *what I find the evidence has shown is that minimal relationships have been shown with both of you, as well as extended family members.*

(Emphasis added). This excerpt reveals that the trial court did make a finding—that no *substantial* relationships existed. If no substantial relationship exists, it logically follows that there is no harmful effect from severing the relationship.

⁶ This court rejects Linda's suggestion that subsection (b) requires the trial court to specifically state the actual age of the child. This claim is not supported by the language of the statute nor any other authority provided in Linda's brief.

This finding is repeated in the written order terminating parental rights: “The Children do not have substantial relationships with either parent or with any other family member which it would harm the Children to sever.” These findings are not clearly erroneous, *see* § 805.17, STATS., as they are supported by evidence in the record.

The record also demonstrates that the trial court did find that termination was essential to the children’s safety and welfare. The trial court reasoned that: “The duration of the separation argues strongly against each of you, and then summarily when these children enter into a more stable and permanent family relationship clearly, that’s what they are in now, and to break it would add instability, confusion, and I think would do harm to it.” It determined: “[Minimal] contact does not establish a family or parent, and [a family or parent is] what these kids have to have. That’s what these kids need if they are going to survive.” In other words, the trial court found that these children need to have stability and a dependable family situation or they will not survive. Lorenzo cannot provide this. He is currently incarcerated and has been for most of the children’s lives. Accordingly, the trial court’s finding that termination is necessary for the children’s welfare is not clearly erroneous. Based on the foregoing, this court concludes that the trial court’s decision to terminate Lorenzo’s parental rights does not constitute an erroneous exercise of discretion.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

